

Medical Claims Conciliation Panel Annual Report to the 1999 Legislature

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Introduction

The Medical Claims Conciliation Panel ("MCCP"), is a program of the Department of Commerce and Consumer Affairs ("DCCA"), State of Hawaii. The MCCP was established twenty years ago by Act 219, 1976 Session Laws of Hawaii, Hawaii Revised Statutes ("HRS") §671-11.

The MCCP program is responsible for conducting informal conciliation hearings on claims against health care providers before such claims can be filed as lawsuits. The decisions of the MCCP panels are advisory in nature and are not binding on the parties, in the event that any party still wishes to pursue the matter via the courts.

The real value of the MCCP program is demonstrated if the parties make conscientious and thorough presentations to the MCCP. In such cases, the decisions rendered by the panels provide the parties with fairly accurate advisory determinations of the relative merits of the claims, which should assist the parties in evaluating whether the claims should be pursued through the judicial system.

The MCCP program also provides opportunities for the parties to exchange information in a relatively expedited and inexpensive manner, which in turn provides for opportunities for the parties to explore the conciliation of meritorious claims prior to such claims being brought before the courts.

Lastly, the requirements of exchanging information between the parties, and making conscientious and thorough presentations to the panels, discourage the pursuit of frivolous or fraudulent claims, prior to further legal proceedings being taken by the parties.

In order to provide the Legislature with a comprehensive review of the MCCP program, the MCCP Annual Report to the 1998 Legislature covers the period of January 1, 1998, through December 31, 1998.

(See Flowchart of the MCCP Process on next page)

The Medical Claims Conciliation Program

In 1998, we continued to improve the processing and hearing of MCCP claims, as well as streamlining the MCCP procedures to minimize unnecessary costs and procedural requirements.

We also made significant strides in making MCCP informational materials and forms available to more people in more formats and media.

Expedited Claims Filing Process

The Expedited Claims Filing Process continues to be utilized by a growing number of parties, and in 1998 there were 25 claims filed utilizing the expedited claims process.

The Expedited Claims are ensured of faster processing through the entire MCCP process, sometimes as quickly as four months from the date of filing to the completion of the MCCP hearing. Additionally, because these expedited cases utilize other facilities to host the hearings, we have been able to schedule more hearings for claims brought under the regular MCCP filing process, because of the increased availability of the MCCP hearings room.

Streamlining of the Process for the Production of Records

Another area of improvement to the MCCP process that was undertaken in 1998, was to change how subpoenas for the production of medical records were issued, and the means by which the subpoenas had to be fulfilled.

Because the MCCP hearing process does not follow the formal rules of evidence, requests for the production of medical records can be made without the need and expense of formal discovery procedures. However, some of the parties to MCCP claims continued to utilize the more formal means of requiring the production of records. This formal discovery process required the custodian of records to appear at a court reporter's office and swear under oath that the documents produced were true and accurate copies of the documents requested, or to answer written interrogatories attesting to the authenticity of the documents produced. This level of formality increases both the cost and the logistical difficulties in producing medical records for MCCP proceedings.

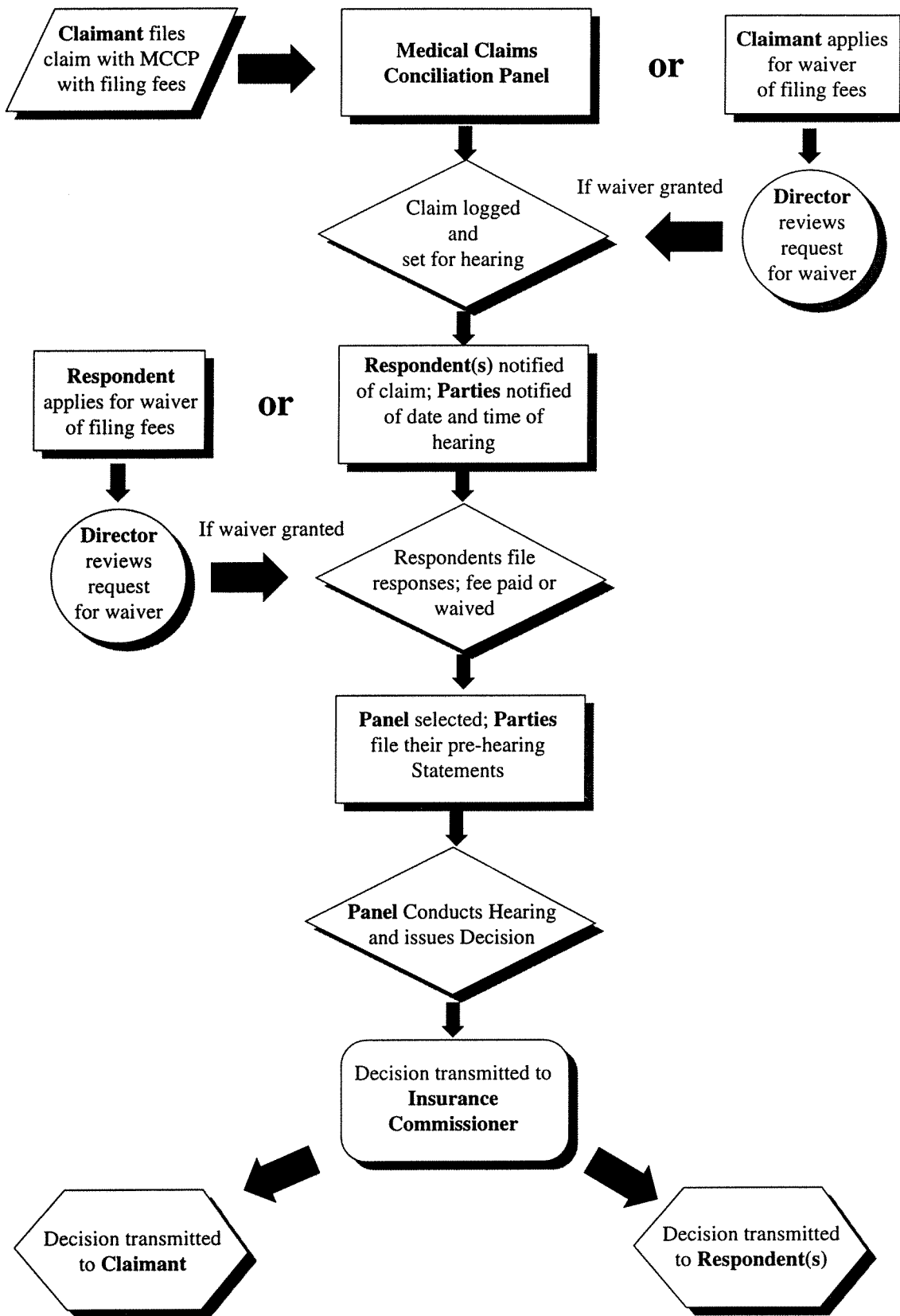
Consequently, we initiated a new procedure that allows the individual or entity subpoenaed to deliver or send copies of the subpoenaed records to the person requesting the documents or a designated representative, along with a statement regarding the accuracy of the copies submitted. The new procedures greatly simplify both the preparation and the transmission of medical records to a requesting party.

Request to Appoint Specific Panel Chairpersons

In order to allow the parties themselves to become involved in the selection of a panel chairperson for a particular case, in 1998, we implemented a new procedure whereby the parties can submit a written request to the director of the Department of Commerce and Consumer Affairs, to have a specific eligible Panel chairperson appointed to serve as the Panel Chairperson for a particular case.

If the parties express a desire to use this process, a list of eligible panel chairpersons is provided to the parties. The parties can then

Flowchart of the MCCP Process



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select an eligible panel chairperson that is agreeable to all parties. Once the parties agree, then they submit their written request to the Director of the Department of Commerce and Consumer Affairs.

In most cases, the Panel chairperson requested by the parties will be appointed by the Director; however it is made clear to the parties that their request to the Director is a request and that the appointment of the chairperson continues to be a function of the Director.

Migration of MCCP Database

At the close of the calendar year 1998, we moved the entire MCCP database to a more capable and functional database program. Although the process did take a substantial amount of effort, we are now capable of analyzing MCCP statistical data in a more comprehensive manner, and on a real-time basis.

MCCP Forms and Informational Materials

The final area of improvement in the MCCP program that occurred in 1998, was regarding the availability of MCCP information and forms.

Thanks to a project undertaken by the Information and Communication Services Division of the Department of Accounting and General Services, we were able to place MCCP forms and informational materials on the State of Hawaii web page on the World Wide Web. As a result of the forms being posted on the State's internet site, parties and interested persons, now have unlimited access to these forms and informational materials, 24 hours a day from any Internet access point anywhere in the world. The internet address for the MCCP informational materials and forms is: www.state.hi.us/forms/, and the forms are under the section for the Department of Commerce and Consumer Affairs, and the Medical Claims Conciliation Panel.

We are currently in the process of adding more MCCP forms and informational materials to the State's website, as well as making the forms available by way of automatic faxing upon request through the DCCA Consumer Dial system.

Number of Claims Filed in 1998

In 1998, there were 154 cases filed with the MCCP program, involving 318 claimants, and 436 respondents. It should be noted that although there were 318 different claimants, there were not 436 different health care professionals and facilities named as Respondents. However, each case requires the same individualized processing effort, even if some of the cases involve some or all of the same respondents.

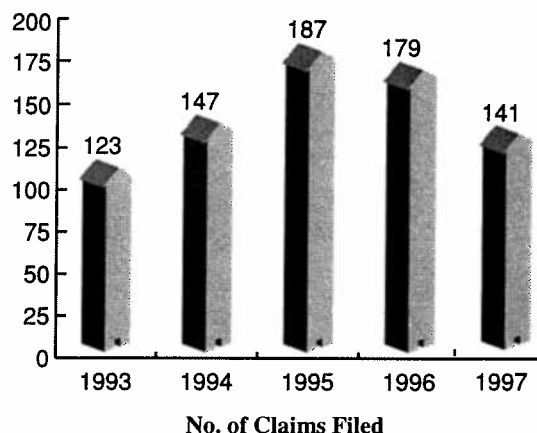
In regards to parties who are unable to pay the required filing fees, in 1998, 31 individuals requested filing fee waivers, and of the 31 requests, 27 waiver requests were granted by the Director.¹

Disposition of Claims Heard in 1998

In 1998, the MCCP panels heard 130 cases that involved a total of 267 claimants and 364 respondents. Once again, it should be pointed out that although these statistics indicate that 267 different claimants were involved in the claims heard by MCCP panels, there were not 364 different health care professionals or facilities involved.

¹ The requests to waive the filings were denied because the claimants had the financial ability to pay the required filing fees. The MCCP utilizes the same financial guidelines to determine a party's eligibility to waive the MCCP filing fees, as the courts use in determining whether a party can proceed in forma pauperis in a judicial proceeding.

Figure 1: Number of Claims Filed in 1994 Through 1998



It is also significant that of the cases heard by the MCCP in 1998: 1) there were 28 cases in which the claimants were not represented by attorneys (*pro se* claimants); 2) of the 130 claims heard, the MCCP found only two underlying claims to be frivolous (palpably without merit); and 3) in 2 cases, claimants who did not have attorneys to represent them obtained findings of actionable negligence against some or all of the respondents involved in those cases.

In 21 of the cases where the panels found actionable negligence on the part of all or some of the respondents, the panels rendered advisory determinations of damages ranging from \$10,000.00 to \$3,000,000.00.

The following table provides a statistical overview of the disposition of cases heard by MCCP panels in 1998.

Figure 2: Disposition of Claims Heard in 1998

Total number of parties in cases heard:	631
Total number of Claimants	267
Total number of Respondents	364
Total number of hearings conducted:	130
Actionable negligence found:	11
Some Respondents negligent:	10
No negligence found:	105
Dismissed at hearing:	3
Settled or withdrawn at hearing:	1
Total Damages Recommended by Panels:²	\$11,020,000.00

² In six of the cases in which the Panels found actionable negligence on the part of all of some of the respondents, the Panels were not able to make determinations of damages.

Figure 3: Comparative Disposition of Claims Heard in 1998

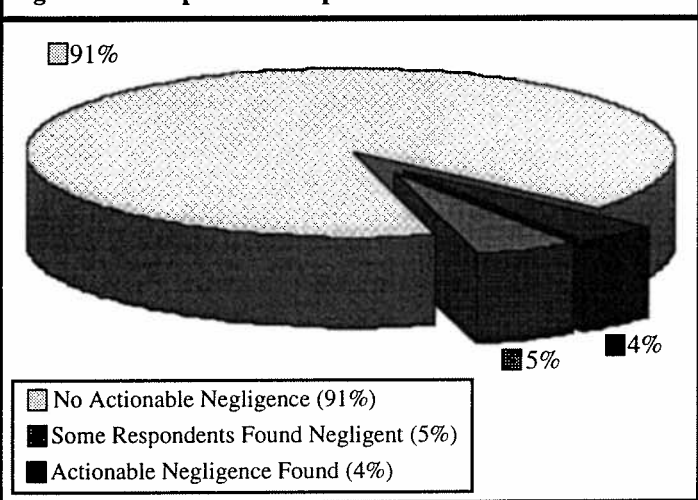


Figure 4: Disposition of Claims Closed Without Hearings

Total Claims Closed Without Hearings:	28
Total Number of Claimants:	49
Total Number of Respondents:	63
Withdrawn:	17
Settled prior to hearing:	7
Othe disposition:	4

Conclusion

We greatly appreciate the support that we have received from everyone during the past several years, while we developed systems and processes for carrying out our additional responsibilities for the MCCP program. We have listened to the concerns and suggestions of the parties and participants, and whenever possible, we have made the required modifications to the procedures involved, or incorporated the proposed solutions into the MCCP program itself.

Special thanks to Rod Maile, Senior Hearings Officer, and his staff at our Office of Administrative Hearings. Rod's commitment to continuous improvement is the driving force behind the innovation in the MCCP process.

We will continue to work with the parties and participants of the MCCP program to find new ways to allow the program to fulfill statutory and philosophical obligations.



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- If you suspect a poisoning, do not wait for signs and symptoms to develop. Call the Hawaii Poison Center immediately.
- Always keep Ipecac Syrup in your home. (This is used to make a person vomit in certain types of poisoning.) **Do not use Ipecac Syrup unless advised by the Hawaii Poison Center.**
- Store all medicines, chemicals, and household products out of reach and out of sight, preferably locked up.
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